

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

[illegible]

PLAINTIFF METRO EQUIPMENT'S ORIGINAL COMPLAINT

Plaintiff Metro Equipment & Rental Co., Inc., (“Metro Equipment”) files this Original Complaint against Tsurumi Manufacturing Co., Ltd. (“Tsurumi Manufacturing”) and Daishin Industries Ltd. (“Daishin Industries”), and shows the Court as follows:

I. PARTIES

1.1 Plaintiff Metro Equipment is a Texas corporation organized and formed under the laws of the State of Texas.

1.2 Defendant Tsurumi Manufacturing is a foreign corporation based in Japan that designs, manufactures, and distributes industrial pumps and other related industrial equipment throughout the globe. This case concerns one of its EPT3-Series pumps. Defendant Tsurumi Manufacturing knew at all relevant times that some of those pumps would be sold, used and serviced in the State of Texas. Having sold more than 100 of this type of pump to Plaintiff Metro Equipment, a Texas dealer, and no doubt thousands more to others in Texas, Defendant Tsurumi Manufacturing cannot complain when called to respond to complaints of defects involving those

same products. Tsurumi Manufacturing distributes its products in the United States, including the state of Texas, through a wholly-owned subsidiary – Tsurumi (America), Inc. Metro Equipment, an innocent seller, sold Tsurumi Manufacturing’s pump in Texas and, later, it was allegedly involved in an accident in Texas. The causes of action in this Complaint arise from those contacts. This Defendant may be served with process through its registered agent pursuant to the Hague Convention at its principal place of business: 16-40, 4-chome, Tsurumi, Tsurumi-Ku, Osaka 538-8585, Japan, or via its alter-ego Tsurumi (America), Inc. at serving its registered agent, CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

1.1 Defendant Daishin Industries is a foreign corporation based in Japan that designs, manufactures, and distributes industrial pumps and other related industrial equipment throughout the globe. Daishin Industries manufactures the EPT3-Series pump for Tsurumi Manufacturing understanding that Tsurumi Manufacturing distributes its products in the United States, including the state of Texas. Defendant Daishin Industries cannot complain when called to respond to complaints of defects involving those same products. Daishin Industries’ pump was sold in Texas by Metro Equipment and was allegedly involved in an accident in Texas. The causes of action in this Complaint arise from those contacts. This Defendant may be served with process through its registered agent pursuant to the Hague Convention at its principal place of business: 1520-1, Funatsuke, Yoro-Cho, Yoro-gun, Gifu 503-1382 Japan.

II. VENUE AND JURISDICTION

2.1 This court has diversity jurisdiction under 28 U.S.C. § 1332(a) since complete diversity of citizenship exists between the parties, and the matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

2.2 Venue is proper in the Western District of Texas pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to the claim occurred in Pecos County, Texas which is in the Western District of Texas. The incident at issue occurred at a site adjacent to US Highway 285 located northwest of Fort Stockton, Texas.

III. FACTS

3.1 On March 31, 2020, Mr. Camilo Salcedo (“Mr. Salcedo”) filed suit in Texas state court in the 151st District Court located in Harris County, Texas with Cause No. 2020-20371 against various parties including Metro Equipment alleging products liability, breach of warranty, and negligence claims.

3.2 Mr. Salcedo’s claims arise out of a fire that occurred on May 6, 2019 at a saltwater disposal facility owned and operated by his former employer in Pecos County, Texas. The fire resulted in permanent injuries to Mr. Salcedo.

3.3 Mr. Salcedo alleges that a Tsurumi pump – sold by Metro Equipment to Mr. Salcedo’s employer – failed when its priming plug came off, covering him in oil. He then claims a fire broke out near the Tsurumi pump, reached him and caused severe burns.

3.4 Mr. Salcedo alleges, in part, that the pump had design, manufacturing and marketing defects.

3.5 Metro Equipment had no role in the pump’s design or manufacturing and did not have any input into the Tsurumi pump’s warnings. Metro Equipment is involved in this suit only because it allegedly sold the pump that Mr. Salcedo claims started the fire.

3.6 Tsurumi Manufacturing and Daishin Industries designed, manufactured, and assembled the pump allegedly involved in this fire. Although, Plaintiff recently filed suit against

Tsurumi Manufacturing and Daishin Industries. Neither Tsurumi Manufacturing nor Daishin Industries have appeared in the state court proceedings.

3.7 Also, Metro Equipment recently filed a motion to designate Tsurumi Manufacturing and Daishin Industries as responsible third parties in the underlying state court proceedings.

3.8 Pursuant to Texas Civil Practice and Remedies § 82.002, the manufacturers are required to “indemnify and hold harmless a seller against loss arising out of a products liability action” excepting losses proven to have been caused by the seller. Neither Defendant has responded to Metro Equipment’s request for indemnity that it made via Tsurumi (America), Inc., a wholly owned subsidiary of Defendant Tsurumi Manufacturing.

IV. CAUSES OF ACTION AGAINST TSURUMI MANUFACTURING AND DAISHIN INDUSTRIES.

4.1 Tsurumi Manufacturing and Daishin Industries are liable to Metro Equipment for Mr. Salcedo’s claims against Metro Equipment because Mr. Salcedo’s alleged injuries may have been proximately caused or contributed to by Tsurumi Manufacturing and Daishin Industries.

4.2 Texas Civil Practice and Remedies Code § 82.002 provides that a manufacturer shall indemnify and hold a seller harmless against loss arising out of a products liability action. Here, the Tsurumi Manufacturing and Daishin Industries manufactured the pump involved in the underlying suit. Accordingly, if Metro Equipment, an innocent seller, is found liable to Mr. Salcedo in the underlying suit, then Tsurumi Manufacturing and Daishin Industries are liable to Metro Equipment for indemnification and contribution.

4.3 Texas Civil Practice and Remedies Code § 82.002 also provides that a seller is entitled to recover court costs, reasonable expenses, reasonable attorney fees, and any reasonable damages incurred to enforce the seller’s right to indemnification. Accordingly, Tsurumi

Manufacturing and Daishin Industries are liable to Metro Equipment for the reasonable damages, including reasonable attorney fees, court costs and other associated expenses, and expenses or damages incurred to enforce Metro Equipment's right to indemnification.

V. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

5.1 Plaintiff claims pre-judgment and post-judgment interest at the maximum rate allowed by law.

VI. JURY DEMAND

6.1 Plaintiff respectfully requests that the Court impanel a jury to decide all fact issues in this case.

VII. PRAYER

Plaintiff Metro Equipment & Rental Co., Inc. respectfully requests that Tsurumi Manufacturing and Daishin Industries be cited to appear and answer this Complaint. Metro Equipment also requests that the Court enter judgment against Tsurumi Manufacturing and Daishin Industries for Metro Equipment's damages, expenses incurred to enforce its right to indemnification, attorney fees, court costs, pre-judgment and post-judgment interest. Lastly, Metro Equipment requests any equitable relief or other relief to which it may be justly entitled.

Respectfully submitted,

/s/ Adolfo R. Rodriguez

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